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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

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MAY 17 1996

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In re

Amendment of Section 73.202(b) )  
Table of Assignments )  
FM Broadcast Stations )  
Brownsville and Beaver Dam )  
Kentucky )

RM - \_\_\_\_\_

To: Chief, Allocations Branch

PETITION FOR RULE MAKING

Charles M. Anderson, by his attorney, hereby petitions for rule making to amend Section 73.202(b) of the Commission's rules as requested herein. This petition is timely, being filed less than nine months after grant of the subject construction permit.

Anderson is the permittee of an unbuilt FM station (call letters unassigned) on Channel 264A at Beaver Dam, Kentucky (File No. BPH-941122MM) (the "station"). The Commission is requested to delete Channel 264A from Beaver Dam, Kentucky, allot Channel 264C3 to Brownsville, Kentucky, and modify Anderson's construction permit to specify Brownsville as the station's community of license, with reference point of N Lat 37° 10' 34"; W Long 86° 18' 08". As shown by the attached Technical Report, this reference point meets all Commission spacing requirements for Channel 264C3 and will provide city-grade coverage to all of Brownsville.

This petition is filed pursuant to Section 1.420(i) of the rules, since the channels are mutually exclusive and the change of community of license would provide a first local service to Brownsville. Accordingly, no competing expressions of interest to

*Handwritten initials and signature:*  
ATB  
MMB

the Brownsville allotment will be permitted and Anderson will not risk the loss of his authorization to competing applicants.

Brownsville, located on State routes 70 and 259, is an incorporated community of 897 persons (1990 Census), with a mayor-council form of government. It is the county seat of Edmonson County, 1990 population 10,357, and is also the retail and financial center for the county. It is the location of the county court house and several county offices. Brownsville has two banks, over 50 retail establishments, a weekly newspaper, an elementary and high school, three churches, and a Chamber of Commerce. Mammoth Cave National Park is located in Edmonson County, and attracts a significant number of tourists. County tourism revenue for 1995 increased by 6.6% over 1994, to \$59,068,157.

Brownsville has grown from 542 in 1970 and 674 in 1980, a 65.5% gain in 20 years. There are no radio stations licensed to or allotments for either Brownsville or any other community in Edmonson County.

The proposed changes will not deprive Beaver Dam of an "existing service." The Commission recognized at paragraph 19 and footnote 16 of its modification of FM and TV Authorizations to Specify New Community of License, 4 FCC Rcd 4870, (1989) recon. granted in part, 5 FCC Rcd 7094 (1990) that for purposes of changing a community license, the phrase "existing service," excludes bare construction permits. Midway, Panacea and Quincy, Florida 10 FCC Rcd 6112, ¶6 (Mass Media Bur. 1995). As noted

above, the station is unbuilt. Furthermore, adoption of Anderson's proposal will result in a preferential arrangement of allotments, serving the goals of Section 307(b) of the Communications Act of 1934, as amended, by bringing a new reception service to a substantial number of people without offending the higher priority of a fair and equitable distribution of local services.

Neither Beaver Dam nor Brownsville currently has a local transmission service. However, Beaver Dam is presently well-served by Stations WLLS and WLLS-FM, Hartford, Kentucky, both of which cover the entire community of Beaver Dam with a city-grade signal. (Stations WQXQ(FM) and WBKR(FM) also provide city-grade coverage to Beaver Dam.) Beaver Dam is located only 1.5 miles from Hartford; they are essentially twin cities. WLLS and WLLS-FM act as local transmission services for Beaver Dam, as they devote significant programming to news and events in Beaver Dam, including carriage of Ohio County school system sports, school closings, school menus, weather and emergency information.

The Commission has addressed the question of whether one community may be considered as having a local service for Section 307(b) purposes by virtue of the service provided by a station licensed to a second community. This is known as the "reciprocal service doctrine." In Kent-Ravenna Broadcasting Co., 22 RR 605 (1961), the Commission stated that this doctrine may be invoked to find that a community has an existing local transmission service if the station of concern provides primary (city-grade) service and also meets the main studio and program origination requirements of

the rules, or good cause for a waiver thereof is shown. The nature of the service the station provides to this community may be considered upon a threshold showing. Radio Greenbrier, Inc., 80 FCC 2d 107 (Rev. Bd. 1980).

Under the reciprocal service doctrine, WLLS and WLLS-FM provide Beaver Dam with local transmission service. The Commission no longer requires that a station locate its main studio in its community of license, nor originate any minimum amount of programming therefrom. Hence, the fact that the main studio of WLLS/WLLS-FM is in Hartford rather than in Beaver Dam is no longer of concern in assessing the relevance of the reciprocal service doctrine.<sup>1</sup> Accordingly, deleting Beaver Dam from the Table of Allotments in favor of Brownsville will not result in Beaver Dam being bereft of a local transmission service.

In contrast, Brownsville receives only one fulltime city-grade signal, that from WGGC(FM) Glasgow, Kentucky, and one daytime city-grade signal from WKCT, Bowling Green, Kentucky. Both Glasgow and Bowling Green are in different counties than Brownsville. According to the director of the local Chamber of Commerce, the needs of neither Brownsville nor Edmonson County are served by either these or any other radio station.

The requested change will provide a new reception service to 103,729 persons, while only 19,696 people now within the coverage contour of the Beaver Dam permit would not receive this new station

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<sup>1</sup> Also, Hartford is within the local telephone calling area for Beaver Dam residents.

operating as a Class C3 station from the proposed reference site. (These people presently have at least five full-time aural services.) Accordingly favorable action on this petition will result in a net gain of new radio service to 84,033 persons. Moreover, an area of 55 square miles containing 1,208 persons will gain a new 5th full-time aural service as a result of this change.

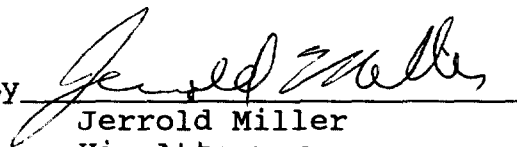
Anderson will promptly apply to modify his construction permit to reflect the new community upon favorable Commission action on this petition, and will promptly construct the new facilities upon grant of the application.

In view of the above, the Commission should amend Section 73.202(b) as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Brownsville, KY	-----	264C3
Beaver Dam, Ky	264A	-----

Respectfully Submitted,

CHARLES M. ANDERSON

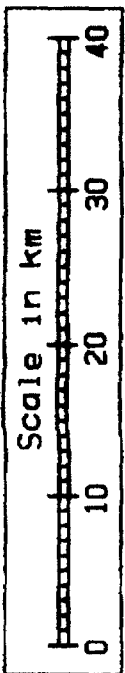
By   
Jerrold Miller  
His Attorney

May 17, 1996

Miller & Miller, P.C.  
P.O. Box 33003  
Washington, DC 20033

INTERCHK

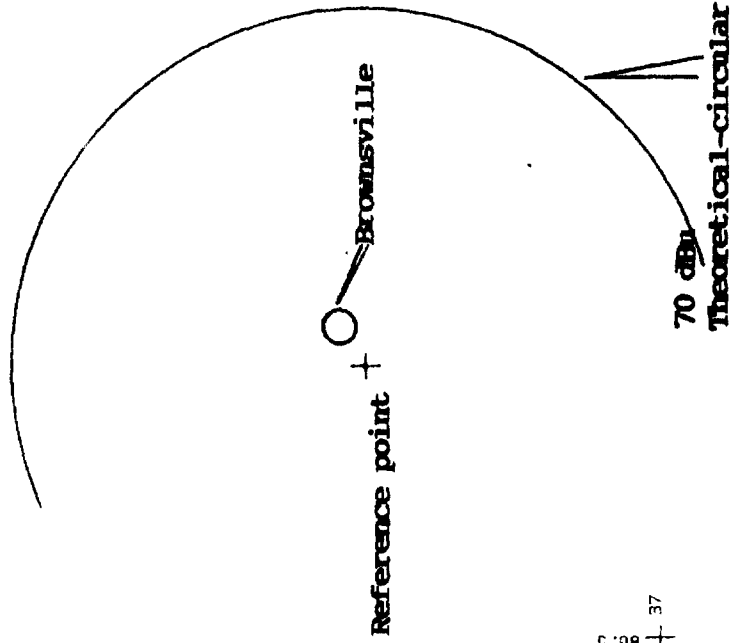
EXHIBIT E-2

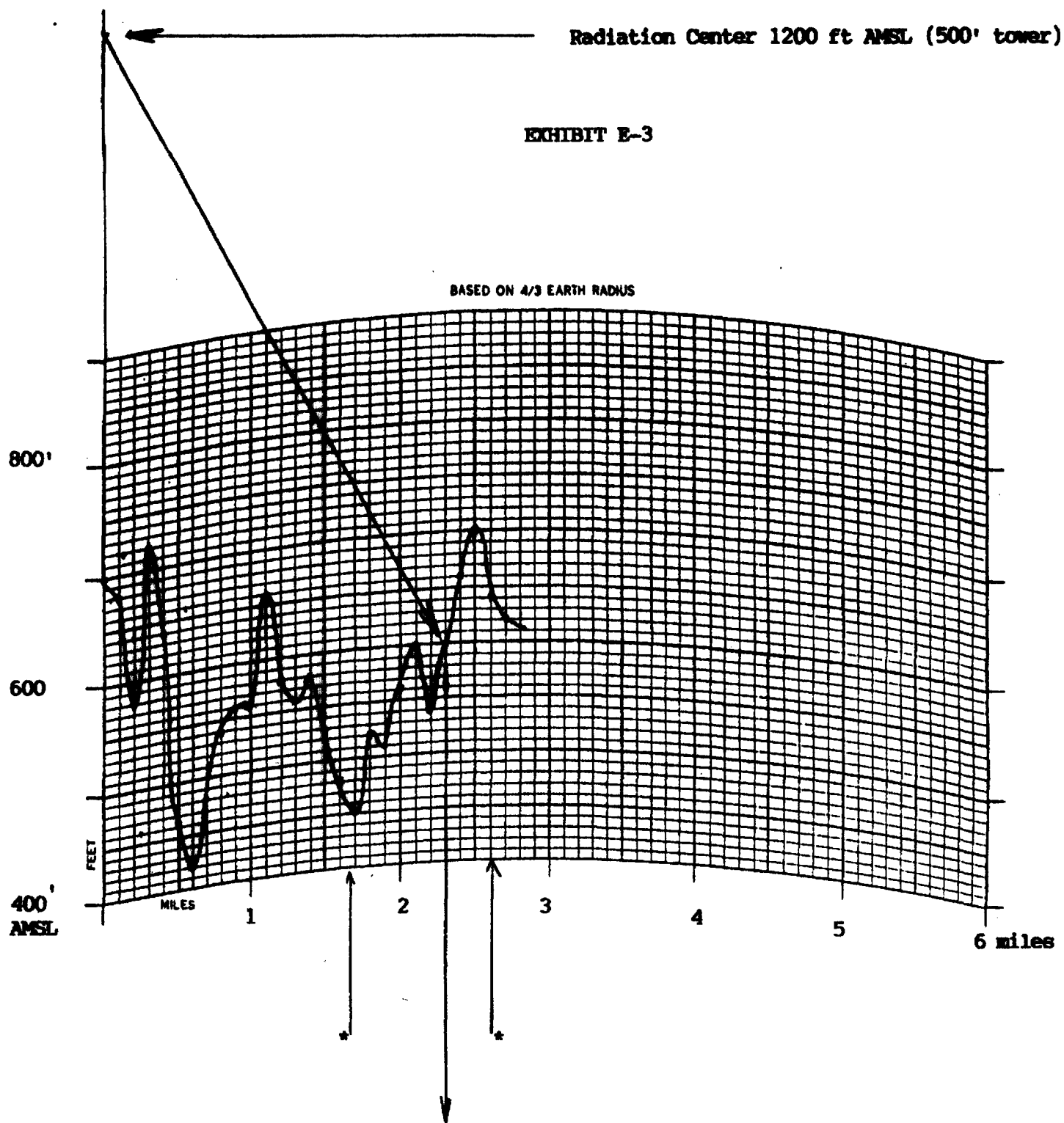


1:500,000

88 + 37.5

88 + 37.5

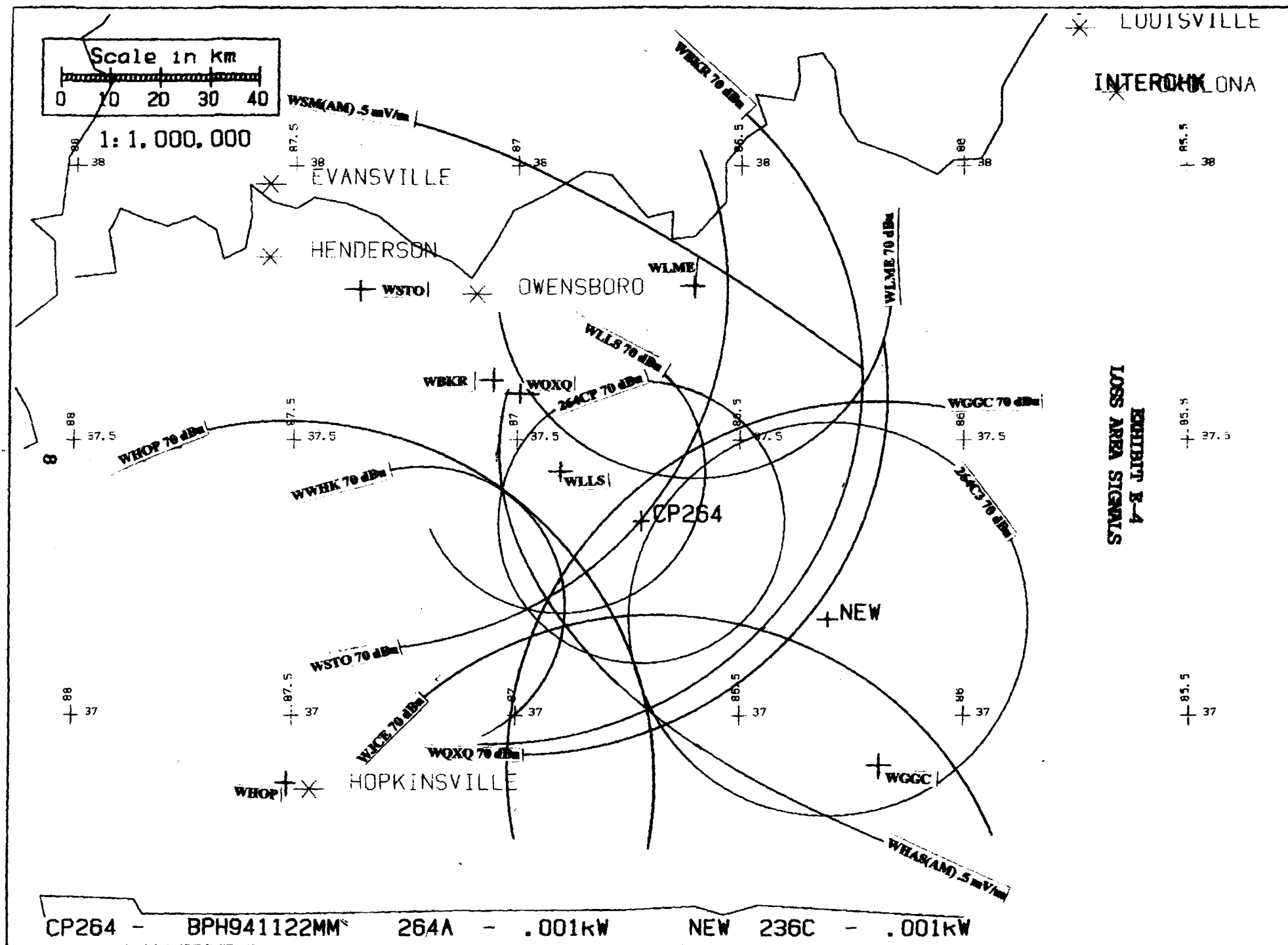




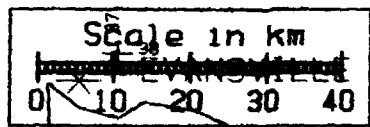
Brownsville reference point N 37-11-42 W 86-15-54

\* Brownsville city limits

Terrain obtained at .1 mile increments from Brownsville, KY 7.5' topographic quadrangle.







1:1,000,000

HENDERSON

OWENSBORO

264CP 70 dBu

WLLS 70 dBu

WJCE 70 dBu

WBKR 70 dBu

HOPKINSVILLE

WDNS 70 dBu

264C3 70 dBu

WBVR 70 dBu

WBEC 70 dBu

WULF 70 dBu

WXPC 70 dBu

WMCC 70 dBu

WHRT 70 dBu

NEW 251A 70 dBu

WBLC 70 dBu

WHAS(AM) 5 mV/m

INTERCHK

EXHIBIT E-5  
GAIN AREA SIGNALS

Shaded area - 5th fulltime aural service.

NEW 264C3 - .001kW

N. Lat. 37 10 34

W. Lng. 86 18 08

**EXHIBIT E-6**  
**STATIONS INCLUDED IN STUDIES OF EXISTING SERVICES**

<b>WBKR</b>	<b>223C</b>	<b>Owensboro, KY</b>
<b>WDNS</b>	<b>227C3</b>	<b>Bowling Green, KY</b>
<b>NEW</b>	<b>231A</b>	<b>Glasgow, KY</b>
<b>WULF</b>	<b>234C2</b>	<b>Hardinsburg, KY</b>
<b>WGGC</b>	<b>236C</b>	<b>Glasgow, KY</b>
<b>WSTO</b>	<b>241C</b>	<b>Owensboro, KY</b>
<b>WBVR</b>	<b>244A</b>	<b>Bowling Green, KY</b>
<b>WHOP</b>	<b>254C1</b>	<b>Hopkinsville, KY</b>
<b>CP</b>	<b>264A</b>	<b>Beaver Dam, KY</b>
<b>NEW</b>	<b>264C3</b>	<b>Brownsville, KY</b>
<b>WQXQ</b>	<b>270C1</b>	<b>Central City, KY</b>
<b>WMCC</b>	<b>272A</b>	<b>Munfordville, KY</b>
<b>WLME</b>	<b>275C3</b>	<b>Cannelton, IN</b>
<b>WHHT</b>	<b>279C3</b>	<b>Cave City, KY</b>
<b>WKHG</b>	<b>285A</b>	<b>Leitchfield, KY</b>
<b>WWHK</b>	<b>288A</b>	<b>Greeneville, KY</b>
<b>WLLS</b>	<b>292A</b>	<b>Hartford, KY</b>
<b>WXPC</b>	<b>294A</b>	<b>Horse Cave, KY</b>
<b>WBLG</b>	<b>296C2</b>	<b>Smiths Grove, KY</b>
<b>WSM(AM)</b>	<b>650 kHz</b>	<b>Nashville, KY (50 kw-U)</b>
<b>WHAS</b>	<b>840 kHz</b>	<b>Louisville, KY (50 kw-U)</b>

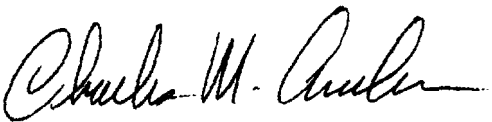
### **CERTIFICATION**

**Charles M. Anderson hereby certifies that;**

**His qualifications in broadcast allocation matters are a matter of record before the Federal Communications Commission having been presented and accepted on many occasions in the past;**

**That he holds a lifetime General Radiotelephone license (#PG-6-7352) , a bachelors degree in the physical sciences from Western Kentucky University and advanced degrees in the communications field from the University of North Carolina and Indiana University;**

**That the accompanying technical report and exhibits were developed by him personally or under his immediate supervision and that all the information presented therein is true and correct to the best of his knowledge and belief.**

/s/   
\_\_\_\_\_  
**Charles M. Anderson**

**May 15, 1996**